

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

DANIEL LEPIANE, individually and
on behalf of similarly situated JOHN
DOES 1-100,

Plaintiffs,

vs.

FPN, INC., d/b/a FIRST NATIONAL
PAWN; FNP of MONTANA, INC.,
d/b/a FIRST NATIONAL PAWN;
FPN of MISSOULA, INC., d/b/a
FIRST NATIONAL PAWN; FNPS,
LLC; FIRST NATIONAL
PROPERTIES, LLC, and DOES 1-5,

Defendants.

CV 20–163–M–DLC

ORDER

Before the Court is United States Magistrate Judge Kathleen L. DeSoto's Findings & Recommendation. (Doc. 17.) Judge DeSoto recommends that the Court grant Defendants' motion to dismiss (Doc. 2) as to Count I of Plaintiffs' complaint, with leave to amend. (Doc. 17 at 14–15.) Importantly, following issuance of Judge DeSoto's Findings & Recommendation (Doc. 17), Plaintiffs filed an amended complaint. (Doc. 19.)

The amended complaint supersedes Plaintiffs' original complaint and moots Defendants' motion to dismiss to the extent it attacked the original complaint.

Ramirez v. Cty. of San Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015).

Authority exists for the proposition that this Court may nonetheless treat Defendants' motion to dismiss as targeting the amended complaint. *Pettaway v. Nat'l Recovery Sols., LLC*, 955 F.3d 299, 303–04 (2d Cir. 2020); *see also Williams v. Southern Or. Credit Serv., Inc.*, 2016 WL 8261902, *1–2 (D. Or. 2016). Given the posture of this case, however, the Court declines to take this approach. Defendants are free to file another motion should they elect to do so.

Accordingly, IT IS ORDERED that the Court declines to adopt Judge DeSoto's Findings & Recommendation (Doc. 17) on the grounds that it is moot.

IT IS FURTHER ORDERED that Defendants' motion (Doc. 2) is DENIED as moot.

DATED this 17th day of February, 2021.



Dana L. Christensen, District Judge
United States District Court